



- (1) The nature and extent of claimant's injury and/or disability including whether claimant suffered a permanent aggravation of a preexisting condition.
- (2) Whether claimant suffered accidental injury arising out of and in the course of his employment on the date alleged.
- (3) Whether claimant provided notice of the alleged injury.
- (4) Whether the Kansas Workers Compensation Fund was timely impleaded in this matter.
- (5) The liability, if any, of the Kansas Workers Compensation Fund.
- (6) Whether the preliminary hearing transcript of August 12, 1994, including exhibits, should be considered as part of the record.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

With regard to the preliminary hearing transcript and the attached exhibits, the Appeals Board notes that the preliminary hearing transcript was stipulated into evidence at the regular hearing with no discussion regarding the attachments. No objection was raised at that time to any of the materials contained in the exhibits. As the exhibits are a part of the transcript and are discussed in the transcript it would be difficult to exclude these exhibits without a specific objection being raised by one of the parties. Therefore, the Appeals Board finds the transcript and its exhibits were properly contained in the record per the stipulation of the parties.

The Appeals Board finds claimant met with personal injury by accident arising out of and in the course of his employment on the date alleged. The findings of fact and conclusions of law set forth by the Administrative Law Judge regarding these issues are well set out in the Award. It is unnecessary for the Appeals Board to repeat same herein. In finding that claimant had suffered accidental injury to his knees, the Administrative Law Judge noted that no evidence was presented by respondent to dispute claimant's allegation of a bilateral knee injury on the date alleged. As such, the Appeals Board affirms the finding that claimant suffered injury by accident arising out of and in the course of his employment on the date alleged.

There is little dispute that claimant reported the injuries to his knees to his supervisor, Don Holmberg, following his fall. K.S.A. 44-520 requires that claimant give notice of an "accident" and not specifically of the injuries involved in the accident. As the accident was reported, any dispute regarding the extent of the injuries would become an

issue as to the nature and extent of injury and disability. The Appeals Board finds claimant gave timely notice of the accident as required by K.S.A. 44-520.

With regard to the nature and extent of claimant's injury and/or disability, the Administrative Law Judge, again, properly set forth both findings of fact and conclusions of law regarding this issue. The Appeals Board, in adopting those findings of fact and conclusions of law, agrees with the conclusion that claimant suffered accidental injury to his knees with no permanency associated therewith. The information and evidence in the record is insufficient to connect claimant's back symptomatology to the fall. The existence of claimant's preexisting back problems and his multitude of injuries preexisting the January 11, 1994, date of accident leads the Appeals Board to conclude that claimant, while suffering accidental injury on the date alleged did not in any way aggravate his preexisting back condition as a result of the January 11, 1994, fall.

With regard to the impleading of the Kansas Workers Compensation Fund, K.S.A. 44-567(d) requires that an employer do so "prior to the first full hearing where any evidence is presented on the claim." K.S.A. 44-566a. The Fund objects to the timeliness of its impleading as the deposition of claimant's wife was taken prior to the preliminary hearing and the Fund was not impleaded at that time. The Fund was impleaded before the regular hearing, which would constitute the first full hearing in this matter. The wife's deposition was obviously taken for purpose of preliminary hearing. The Appeals Board finds the intent of the law was not violated by the taking of this deposition. Therefore, the Workers Compensation Fund's request being dismissed from this action due to having been untimely impleaded is denied.

Regarding the liability of the Kansas Workers Compensation Fund, the Appeals Board finds any temporary exacerbation which occurred to claimant's back is covered by the testimony of Dr. C. Reiff Brown who found that "but for" claimant's preexisting back condition the exacerbation would not have occurred on January 11, 1994. It is also clear from the record respondent was fully aware of claimant's preexisting back problems and, nevertheless, retained him in its employ. Thus, the requisite knowledge and preexisting impairment have been properly established in the record. The Fund is responsible for 100 percent of the liability associated with any aggravation suffered to claimant's back. There is no indication of any Fund liability for the injury suffered to claimant's knees and the Fund will not be held responsible for any injuries, exacerbations or resulting medical treatment as a result of claimant's knee injury.

The issues dealing with claimant's entitlement to additional temporary total disability compensation and future medical benefits were decided by the Administrative Law Judge but neither were appealed to nor argued before the Appeals Board. As such, these findings by the Administrative Law Judge will not be disturbed by the Appeals Board.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bruce E. Moore dated February 13, 1996, shall be

affirmed in part and modified in part with the only modification being that the Kansas Workers Compensation Fund shall be responsible for the medical compensation paid for the treatment of claimant's back. The respondent and its insurance carrier shall be responsible for the medical compensation paid for the treatment of claimant's knee injuries. In all other regards the Award of the Administrative Law Judge is affirmed and, with the exception of the medical treatment provided, claimant is denied compensation against the respondent, its insurance carrier and the Kansas Workers Compensation Fund for any permanency associated with the injuries suffered on January 11, 1994.

Fees and expenses necessary to defray the administration of the Kansas Workers Compensation Act are hereby assessed against the respondent with a 50% reimbursement to the respondent to be assessed from the Kansas Workers Compensation Fund to be paid as follows:

Underwood & Shane	
Deposition of Peggy Cormack	\$179.00
Deposition of Donald Holmberg	\$514.50
Owens, Brake & Associates	
Preliminary Hearing Transcript	\$312.60
Brent W. Christopher, R.P.R.	\$336.65
Owens, Brake, Cowan & Associates	
Regular Hearing Transcript	\$419.60

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1996.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

c: Robert A. Anderson, Ellinwood, KS  
James M. McVay, Great Bend, KS  
Kent Roth, Great Bend, KS  
Bruce E. Moore, Administrative Law Judge

**DANNY GENE CORMACK**

**5**

**DOCKET NO. 190,238**

Philip S. Harness, Director